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LEE MAX BARNETT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE MAX BARNETT,)	NO. CIV-S-99-2416 JAM CMK
)	
Petitioner,)	
)	PETITIONER'S MOTION TO FILE NON-
v.)	PARTY'S MEDICAL RECORDS UNDER
)	SEAL; ORDER
ROBERT L. AYERS, JR., WARDEN,)	
San Quentin State Prison)	<u>DEATH PENALTY CASE</u>
)	
Respondent.)	Hearing Date: Wednesday, October 22, 2008
)	Hearing Time: 10:00 a.m.
)	Location: Redding (Telephonic Appearances)

Jennifer M. Corey and Robert D. Bacon, counsel for Petitioner LEE MAX BARNETT, respectfully request pursuant to Local Rules 39-140(a)(vi) and 39-141(a), respectfully requests leave to file under seal medical records of non-party Jacek Gabryelski. Contemporaneously with this motion, Mr. Barnett is filing a motion to take the deposition of Mr. Gabryelski to perpetuate his testimony because of his terminal illness. In support of his motion to file under seal, Mr. Barnett states:

Motion to File Non-Party's Medical Records
Under Seal; ~~Proposed~~ Order

Barnett v. Ayers, CIV S-99-2416 JAM CMK

1 Congress has guaranteed the privacy of medical records. See Regulations implementing the Health
 2 Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, 45 C.F.R. Parts 160 and 164
 3 (effective April 14, 2003). The Ninth Circuit has held that “[i]ndividuals have a constitutionally protected
 4 interest in avoiding 'disclosure of personal matters,' including medical information.” *Tucson Woman's*
 5 *Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004). California likewise has recognized that medical
 6 information is personal and confidential. *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 41 (1994).
 7 The right to privacy in one's medical records is protected by Article I, section 1, of the California
 8 Constitution. *John. B. v. Superior Court*, 38 Cal. 4th 1177, 1198 (2006). See also Eastern District Local
 9 Rule 39-140(a)(vi) (information required to be kept confidential pursuant to federal law must be redacted).

10 Mr. Barnett must submit Mr. Gabryelski's medical records to substantiate his claim that Mr.
 11 Gabryelski is terminally ill, therefore Mr. Barnett should be permitted to take his deposition to perpetuate
 12 his testimony. However, there is no reason for Mr. Gabryelski's personal, confidential medical
 13 information to be made public simply so that Mr. Barnett can vindicate his rights to due process and a fair
 14 habeas corpus proceeding.

15 Petitioner provided Mr. Gabryelski's medical records to Respondent's counsel on September 23,
 16 and will provide them again with this motion. Petitioner seeks to protect Mr. Gabryelski's records from
 17 public view, but not from Respondent's view.

18 WHEREFORE, Mr. Barnett respectfully requests that this Court accept for filing under seal Mr.
 19 Gabryelski's medical records, submitted in support of Mr. Barnett's motion for leave to take deposition of
 20 Jacek Gabryelski.

21 Dated: October 10, 2008

Respectfully submitted,

ROBERT D. BACON

DANIEL J. BRODERICK
 Federal Defender

/s/ Jennifer M. Corey
 JENNIFER M. COREY
 Assistant Federal Defender

Attorneys for Petitioner
 LEE MAX BARNETT

Motion to File Non-Party's Medical Records
 Under Seal; ~~Proposed~~ Order

ORDER

Good cause appearing, Petitioner's Motion to File Non-Party's Medical Records Under Seal is GRANTED. Jacek Gabryelski's medical records, submitted in support of Petitioner's Motion for Leave to Take Deposition of Jacek Gabryelski, shall be filed under seal.

DATED: October 17, 2008


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE